

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

Byron Martin,	:	
Plaintiff,	:	
	:	
v.	:	File No. 1:07-CV-8
	:	
Soft Sheen-Carson, LLC,	:	
Defendant.	:	

ORDER
(Papers 9, 10 and 13)

Plaintiff Byron Martin brings this *pro se* action claiming that he was harmed by a hair removal product. Because Martin is proceeding *in forma pauperis*, service of process has been handled by the U.S. Marshals Service. The first attempt at service was returned unexecuted on June 12, 2007, and a new summons was quickly re-issued. Shortly thereafter, Martin filed a motion inquiring about the status of the case, and specifically the service issue (Paper 9).

On September 11, 2007, Martin filed a motion for default judgment on the assumption that the summons and complaint had been properly served (Paper 10). On September 21, 2007, the defendant responded with a motion to dismiss for lack of service (Paper 13). The Court received an executed summons on September 18, 2007.

When Martin filed his motion for default judgment, the defendant had not yet been served. The motion (Paper 10) is, therefore, DENIED. Although service was effected outside the time period allowed under Rule 4(m), failure of the Marshals Service to properly effect service constitutes "good cause." Fed. R. Civ. P. 4(m); see Stoenescu v. Jablonsky, 162 F.R.D. 268, 270 (S.D.N.Y. 1995). Accordingly, and in light of the fact that service has now been effected, the defendant's motion to dismiss (Paper 13) for lack of service is DENIED. Martin's motion to acquire the status of the case (Paper 9) is DENIED as moot. The defendant shall file an answer or other responsive pleading within 30 days of the date of this Order.

SO ORDERED.

Dated at Brattleboro, in the District of Vermont,
this 5th day of December, 2007.

/s/ J. Garvan Murtha
J. Garvan Murtha
United States District Judge